

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

O.P. & DONA L. MORROW,)	DOCKET NO.: PT-1999-6
)	
Appellants,)	
)	
-vs-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

The above-entitled appeal was heard on February 16, 2000, in the City of Great Falls, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The taxpayers, represented by O. P. Morrow, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Residential Appraiser Jason Boggess, presented testimony in opposition to the appeal. Testimony was presented and exhibits were received. The Board then took the appeal under advisement; and the Board, having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayers are the owners of the property which is the subject of this appeal and which is described as follows:

Condominium unit number 54, Devonshire Condominiums, 1200 32nd Street South, City of Great Falls, County of Cascade, State of Montana; geo code #3016-17-2-05-02-C054. (Assessor code #0000635300).

3. For the 1999 tax year, the DOR appraised the subject property at a value of \$6,690 for the land and \$117,110 for the improvements.

4. The taxpayers appealed to the Cascade County Tax Appeal Board on an undated form, received by the county board on October 12, 1999, requesting a reduction in value to \$6,000 for the land and \$80,803 for the improvements, stating:

I believe our property is appraised too high for the following reasons.

Our residence is a three-storey (sic) townhouse, with attached (semi) garage and also attached to other townhouses on each side. The gross area of my lot is 1728 sf. compared with average lot in Great Falls of 10,000 (200 x 50) sf.

Similarly valued single residences, with similar gross living spaces in many of the nearby neighborhoods enjoy much larger lots as shown above. These residences on the larger tracts of land necessitate greater City services due to the

much greater area with consequent greater street (and Alley) frontage to be maintained (sic) and served.

The 93-unit Devonshire complex occupies an area equivalent to approximately three (3) City blocks, with City streets adjoining only two sides of the tract, about 773 lineal feet (lf) of pavement (measured at the street centerline) This equates to about 8-1/3 lf of City street per residence.

In the surrounding neighborhoods there are approximetly (sic) 14 (or less) residences per City block. This equates to about 1500 lf of street to be maintained, or about 107 lf of City street per residence (average). In addition, there are also about 50 lf of alleyway per residence that requires the City's attention.

City police services are rare and are not patrolled as the majority of residents are over 50 and have few or any children that require any City services as per bus transportation.

Further, the leaf removal, tree care, snow removal and garbage removal are all paid by the residents without requiring service from the City.

Sewers in the complex connect approximately four or six places for the 93 units while each home in the area requires one connection. 93 connections versus 14 connections.

City water to the complex is to one meter and in the same above example one meter for 93 units (homes) versus one each per home in other areas.

In view of the above, I request that my 1999 phase in value of \$94,351.00 (lot and improvements) be reduced 8% to \$86,803.

5. In its November 16, 1999 decision, the county board disapproved the taxpayers' requested values of \$6,000 for the land and \$80,803 for the improvements, stating:

After hearing testimony and reviewing exhibits, the Board finds the values set by the Dept. of Revenue accurately reflect the true market value of the subject property. This appeal is disapproved.

6. The taxpayers appealed that decision to this Board on December 7, 1999, stating:

The biased method of determining area and residential values between City Homes and townhouses, and the large assessment variations during 1997 UNFAIR. I object to comments made during my appeal process, "Did I represent myself or some 90 other DTHA units"

7. During the hearing, the taxpayers changed their total requested value to \$110,000, withdrawing the appeal of the DOR's land value of \$6,690, and requesting a value of \$103,310 for the improvements.

TAXPAYERS' CONTENTIONS

Mr. Morrow stated that he is representing only himself at this hearing, and not the Devonshire Townhouse Association. There are 93 units in this townhouse complex, each owned by individuals. Although his townhouse is valued at \$123,000 by the DOR, he feels that it should be valued at approximately \$110,000. Therefore he is agreeing to the DOR's land value of \$6,690 and changing his requested improvement value to \$103,310.

Taxpayers' Exhibits 1 through 5 contain sales information and photographs of Devonshire Townhouse units numbers 68, 40, 69, 53 and 98, which were sold during 1996 and 1997. Taxpayers' Exhibit 6 contains size data and a photograph of the subject property. Taxpayers' Exhibit 7 is a summary of the information contained in Exhibits 1 through 6, and is presented in pertinent part as follows:

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Exhibit. No.	1	2	3	4	5	6
Unit No.	68	40	69	53	98	54 (subject)
Basement (sq. ft.)	858	792	858	792	792	792
Main level (sq. ft.)	858	792	858	792	792	792
Upper level (sq. ft.)	1014	864	936	936	936	936
GLA (gross living area- sq. ft.)	1872	1656	1794	1728	1728	1728
Garage	2	2	2	2	2	2
Condition	Average	Average	Average	Average	Average	Average
Sale price	\$98,000	\$96,500	\$114,000	\$109,500	\$100,000	
Sale date	1997	5/97	6/97	10/97	12/96	
Assessed value	\$129,400	\$116,300	\$83,700	\$124,100	\$111,500	\$123,800

Mr. Morrow explained that he prepared Exhibit 7 as a summary to demonstrate that in his unit and in the units he selected as his comparable sales, "the basements are all about the same, the main levels are about the same, the upper levels are about the same; and the total living area of Exhibit 1 is a little higher and that of Exhibit 2 is a little lower, but the rest of them are almost exactly the same square footage. All places have two-car garages. The conditions of all the homes appear to be about the same. I could only average them, not having been in all of them. The sale prices are roughly in the neighborhood of what I'm asking. The sale dates are 1996 and 1997, and, as you can see by the assessed values, they're so high and so low, it's kind of hard to believe that anybody's ever even looked into

these houses to see what they're worth and what they're selling for. I averaged all the houses together, and they came up with \$103,600 for the average of all five of those houses, and that's why I figured \$110,000 assessed value on my house would be a fairly reasonable amount. I figured if I put my house up for sale, that's what I'd ask for it. I may have to take less, but I don't think I'd get any more."

In response to questions by the Board, Mr. Morrow testified that "a friend of mine got me the numbers. He works for real estate, and the numbers are all from the sheets that he has." He further testified that he had obtained the sale prices of his comparable sales from "the county." The assessed values shown on his exhibits are as of January 1, 1996. Mr. Morrow stated that owners of the units in the Devonshire complex pay association dues, and the association is responsible for the exterior maintenance of the units, which is done on a regularly-scheduled basis.

DOR'S CONTENTIONS

DOR's Exhibit A is a copy of the property record card for the subject property. Mr. Boggess described the following characteristics of the property:

Bldg. height & style:	2 story condominium
Exterior walls:	Frame; wood siding
Roof type & material:	Gable; asphalt shingles
Foundation:	Concrete
Basement:	Full; 792 s.f., fully finished
Heating:	Gas forced air with central air

Heated floor area: 1728 square feet
Number of rooms: 7 total; 3 bedrooms, 2-1/2 baths; 1 family room
Garage: 440 sq. ft. detached garage, average condition
Age & effective age: Built in 1972; effective year 1985
Physical condition: Good
Grade: Average
CDU: Good

Mr. Boggess testified that after the county board hearing, the DOR changed the number of bedrooms in the subject property from 4 to 3 on the property record card, although this number was not changed on the Montana comparable sales sheet. This change did not affect the value of the subject property.

DOR's Exhibit B is a copy of the Montana comparable sales data, summarized in pertinent part as follows (all comparables are units within the Devonshire complex):

	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5
# of stories	2	2	2	2	2	2
Attic	None	None	None	None	None	None
Ext. wall	Wood sdg.	Wood sdg.	Wood sdg.	Wood sdg.	Wood sdg.	Wood sdg.
Style	Condo	Condo	Condo	Condo	Condo	Condo
Yr. Built / effective yr.	1972/85	1971/90	1971/90	1973/90	1972/85	1969/80
Basement	Full	Full	Full	Full	Full	Full
Bedrooms	4	4	4	3	4	4
Family rms.	1	1	1	0	1	1
Bathrooms	2-1/2	3-1/2	3-1/2	2-1/2	2-1/2	2-1/2
Total rooms	7	8	8	6	7	9
Heat	Central/air	Central/air	Central/air	Central/air	Central/air	Central/air
Finished Basemt.	792 s.f.	792 s.f.	792 s.f.	0	396 s.f.	640 s.f.
Grade	5	5	5	5	5	5
CDU	Good	Good	Good	Good	Average	Average
1st fl. area	792 s.f.	792 s.f.	792 s.f.	792 s.f.	792 s.f.	858 s.f.
2nd fl. area	936 s.f.	936 s.f.	864 s.f.	864 s.f.	864 s.f.	1,014 s.f.
Tot. living area	1,728 s.f.	1,728 s.f.	1,656 s.f.	1,656 s.f.	1,656 s.f.	1,872 s.f.
Detached garage area	440 s.f.	440 s.f.	440 s.f.	440 s.f.	440 s.f.	440 s.f.
Pricing Data						
RCN	\$101,500	\$102,710	\$100,750	\$87,300	\$93,120	\$103,930

Percent good	90%	96%	96%	96%	85%	81%
	Subject	Comp #1	Comp #2	Comp #3	Comp #4	Comp #5
RCNLD	\$103,230	\$111,420	\$109,290	\$94,710	\$89,440	\$95,120
Tot. OB&Y	\$5,640	\$5,370	\$5,370	\$5,370	\$5,460	\$5,110
Condo Master*	\$3,610	\$3,610	\$3,610	\$3,610	\$3,610	\$3,610
Land value	\$6,690	\$3,270	\$3,270	\$3,270	\$3,270	\$3,270
Total cost	\$119,170	\$123,670	\$121,540	\$107,130	\$101,780	\$107,110
Valuation						
Sale date		9/95	9/95	3/95	8/94	12/95
Sale price		\$131,500	\$128,900	\$95,000	\$91,000	\$98,000
MRA Estimate	\$126,830	\$123,557	\$121,135	\$103,650	\$98,389	\$118,518
Adj. sale		\$134,773	\$134,594	\$118,180	\$119,441	\$106,311
Comprblty.		26	31	35	62	66
Weighted estimate	\$125,102					
Market value	\$123,800					
Field Control Code Indicator	2					

*Condo Master - pool & clubhouse.

Mr. Boggess explained that the land values shown on Exhibit B for the comparable properties were erroneously based on the 1989-1992 appraisal cycle rather than the 1992-1996 cycle, and they each should have been \$6,690, the same as the subject property, rather than \$3,270. The land value for each unit in the Devonshire complex is determined in the following manner: land in the subject neighborhood is valued at \$1.50 per square foot, multiplied by the total land area of the Devonshire Townhouses, (419,000 square feet), divided by the total number of units (93).

BOARD'S DISCUSSION

Mr. Morrow is concerned about the apparent discrepancies between the sale prices and the DOR's assessed values of the comparable sales he presented. Although he testified that he had obtained the sales data from "a friend who works for real estate," he did not give the realtor's name, nor did he present any written exhibits showing the origin of the sales data. The dates of the comparable sales were shown on Exhibits 1 through 5 and Exhibit 7 as 12/96, 5/97, 6/97, 10/97 and 1997. As Mr. Boggess explained, the DOR is limited to using comparable sales during a specific appraisal cycle, which in this case is 1992 through January 1, 1996. Mr. Morrow's comparable sales all occurred after that time frame, and no evidence was presented by either side to indicate whether values in that neighborhood had increased or decreased during 1996 and 1997. The Board recognizes that a taxpayer is at a disadvantage when trying to obtain older sales information from realtors. Generally the only information they would have available would be more recent sales.

The Board analyzed the comparable sales data presented by the DOR, noting that the sale dates were 8/94, 3/95, 9/95, 9/95 and 12/95. The average sale price of the DOR's five properties is \$108,800, as compared to the average sale price of \$103,600 for the five comparable properties

presented by the taxpayer. This may be an indication that values of Devonshire Townhouse units dropped between 12/95 and 12/96, but the Board cannot draw that conclusion based on evidence presented. Mr. Boggess testified that the DOR had not yet looked at sales information for the current cycle, but "because the Devonshire is one of the older condo or townhouse units in Great Falls, people are buying the newer ones and not buying the older ones, so the values are starting to drop." The Appraisal Institute's publication, The Appraisal of Real Estate, Eleventh Edition, notes that *"Perhaps the single greatest criticism of sales comparison is that the approach lags behind the market, resulting in appraisals that are based on dated information."*

The Board noted that the comparability numbers on the DOR's comparable sales are 26, 31, 35, 62 and 66. These are statistical numbers that should be no higher than 150, and they are all well under 150. According to the DOR's Book of General Evidence, a number under 100 indicates good comparability. The lower the number is, the more comparable the property is to the subject property, and these numbers are among the lowest the Board has seen on a comparable sales data sheet.

The Board also noted that the field control code indicator on the comparable sales sheet is 2. This number

can range from 1 to 5, with 3 being average. This code is an indicator of variations among the adjusted sales, and a field code of 2 indicates 5%-10% variation. *"For properties more than \$100,000..., a field control code of 2 or less is considered reasonable,"* according to the DOR's Book of General Evidence.

The Board discussed the fact that in a condominium or townhouse complex, where the exterior of the units is very similar and exterior maintenance such as painting and roofing is done on a regular basis, the differences in sale prices of the units might depend largely on the units' interiors. DOR appraisers do not often have access to the interior of a residence, so must base their opinion of the CDU and effective age on an external review. The Board has no evidence regarding the condition of the interiors of any of the comparable sales presented by either the taxpayer or the DOR. Mr. Morrow testified that he had been inside some of the units he had used for comparable sales, including #53, which is next door to him. This unit had sold in 10/97 for \$109,500, but he testified that it had previously sold for \$92,000 in 1995 or 1996 because "the guy that owned it got in a bind and couldn't sell it for \$100,000 so let her have it for \$92,000." He further testified that the woman who purchased it "lived there for a year and moved to

Florida" and that she had done no renovations to the unit during the time she lived there. The Board noted that despite this, the unit then sold for \$109,500, indicating the possibility of a rise in the market at that point in time.

Mr. Morrow testified that during the more than 20 years that he had lived in his unit, he had put in hardwood floors, changed the kitchen by installing new cupboards, and installed new carpet. He noted that "everybody has to put carpet in."

From the limited testimony as to the interior conditions of any of the units, the Board was unable to draw any specific conclusions as to how the sale prices of the various units were affected by the interior maintenance and decorating, or lack thereof, but the Board agreed that the interiors could make a great difference in the "buyer appeal" and thus the sale price of these units that look so much alike on the outside.

We find it difficult to understand how the DOR assigned varying effective ages to these units without seeing the interiors, since the exteriors are painted and maintained on a regular schedule. Yet the DOR has assigned an effective age of 1985 to the subject property and to comparable sale #4, an effective age of 1980 to comparable sale #5, and

effective ages of 1990 to comparable sales #1, #2 and #3. Mr. Boggess testified that he was not the only appraiser working on these units, and perhaps the other appraiser had seen the interiors of some of the units. Since the other appraiser was not present to testify, the Board disregarded this testimony.

The Board asked Mr. Boggess to explain why the sale price of unit 69 on Taxpayers' Exhibit 3 was so much higher (\$114,000) than the assessed value (\$83,700), when the sale prices of the taxpayers' other comparable properties were less than their assessed values. Mr. Boggess explained that "when we did a reappraisal, which is prior to the sale price, it might have looked not as good as the rest of the units and probably had a lower effective year and CDU. They could have done some remodeling that we don't know about, and then sold the property for more."

The DOR has determined the market value for the subject property based on the sales comparison approach to value. In this method of appraisal, adjustments to the comparable sales prices are required. The subject property can be considered superior to the comparable sales in some respects and inferior in other respects, and the CAMAS (Computer Assisted Mass Appraisal System) is designed to address these differences.

The Board carefully examined the comparable sales presented by the DOR, and prepared a table showing the superiority or inferiority of specific aspects of the comparable properties. This information is summarized in pertinent part in the following table. We attempted to do the same analysis of the comparable properties presented by the taxpayers, but lacked some of the essential information that would be needed to do this.

DOR Comparable Sales

Property	Subject	Sale #1	Sale #2	Sale #3	Sale #4	Sale #5
Sale Price		\$131,500	\$128,900	\$95,000	\$91,000	\$98,000
Sale Date		9/95	9/95	3/95	8/94	12/95
Total Living Area	1,728 s.f.	1,728 s.f.	1,656 s.f.	1,656 s.f.	1,656 s.f.	1,872 s.f.
Sale Price/Total Living Area		\$76.10	\$77.84	\$57.37	\$54.95	\$52.35
Total Living Area	1,728	1,728	1,656	1,656	1,656	1,872
Comparison		Similar	Inferior	Inferior	Inferior	Superior
Adjustment		0	+	+	+	-
Effective Age	1985	1990	1990	1990	1985	1980
Comparison		Superior	Superior	Superior	Similar	Inferior
Adjustment		-	-	-	0	+
# of Bathrooms	2-1/2	3-1/2	3-1/2	2-1/2	2-1/2	2-1/2
Comparison		Superior	Superior	Similar	Similar	Similar
Adjustment		-	-	0	0	0
# of Bedrooms	3	4	4	3	4	4
Comparison		Superior	Superior	Similar	Superior	Superior
Adjustment		-	-	0	-	-
Finished Basement	792 s.f.	792 s.f.	792 s.f.	0	396 s.f.	640 s.f.
Comparison		Similar	Similar	Inferior	Inferior	Inferior
Adjustment		0	0	+	+	+
Garage	Yes	Yes	Yes	Yes	Yes	Yes
Comparison		Similar	Similar	Similar	Similar	Similar
Adjustment		0	0	0	0	0
CDU	Good	Good	Good	Good	Average	Average
Comparison		Similar	Similar	Similar	Inferior	Inferior
Adjustment		0	0	0	+	+
# of Adjustments		3	4	3	4	5
		Superior	Superior	Inferior	Inferior	Inferior

If the DOR's appraised value of the subject property, \$123,800, is divided by 1728 square feet (total living area

in the subject property), the value per square foot of the living area would be **\$71.65** per square foot. This is comparable with Sale #1 (\$76.10/sq.ft.) and Sale #2 (\$77.84/sq.ft.) if they are adjusted. As indicated by the preceding table, these two properties are superior to the subject property, therefore would be adjusted by subtracting from their sale prices. By their comparability numbers of 26 and 31 respectively, they are shown to be more comparable to the subject property than are the remaining three comparable properties, Sales #3, #4 and #5. These properties, as indicated on the preceding table, are all inferior to the subject property, therefore their sale prices would be adjusted upwards to make them comparable to the subject.

The Board was impressed by Mr. Morrow's well-organized presentation, and agrees that there seem to be some discrepancies in the assessed values of some of the Devonshire townhouse units as compared to their sale prices. However, the condition of townhouse interiors may greatly affect their sale prices, yet the Board was given no substantive information regarding the interiors of the subject property or any of the comparable sales.

The Board finds that insufficient evidence was presented to support the taxpayers' requested value.

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CONCLUSIONS OF LAW

1. **§15-2-301 MCA.** The State Tax Appeal Board has jurisdiction over this matter.

2. **§15-2-301, MCA. Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.

3. **§15-8-111, MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

4. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

5. The appeal of the taxpayer is hereby denied, and the decision of the Cascade County Tax Appeal Board is affirmed.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Cascade County by the Assessor of that county at the value of \$6,690 for the land and \$117,110 for the improvements as determined by the Department of Revenue and upheld by the Cascade County Tax Appeal Board. The appeal of the taxpayer is therefore denied, and the decision of the Cascade County Tax Appeal Board is affirmed.

Dated this 29th day of February, 2000.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JAN BROWN, Member

JEREANN NELSON, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of February, 2000, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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DONNA EUBANK
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